

PT 95-74
Tax Type: PROPERTY TAX
Issue: Grounds for Burying the Dead

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

OAKLAWN CEMETERY ASSOCIATION)
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THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

Docket # 94-60-124
Parcel Index #14-1-15-35-02-201-009
(Madison County)

George H. Nafziger
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney Joseph T. Kelleher, Jr., appeared on behalf of Oaklawn Cemetery Association (hereinafter referred to as the "applicant").

SYNOPSIS: The hearing in this matter was held at 1100 Eastport Plaza Drive, Collinsville, Illinois, on May 4, 1995, to determine whether or not Madison County parcel No. 14-1-15-35-02-201-009 should be exempt from real estate tax for the 1994 assessment year.

Mr. Jack Drda, the president of the applicant, Ms. Viola Herrington, the treasurer of the applicant, and Ms. Mary Catherine Gerstenecker, the secretary of the applicant, were present, and testified on behalf of the applicant.

The issues in this matter include first, whether the applicant owned the parcel here in issue during the 1994 assessment year. The second issue is whether the applicant used the parcel here in issue as a graveyard, or grounds for burying the dead, during the 1994 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned the parcel here in issue during the 1994 assessment year. It is also determined that the applicant did not use the parcel here in issue as a graveyard, or grounds for burying the dead,

during the 1994 assessment year.

FINDINGS OF FACT:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department"), in this matter, namely that the parcel here in issue did not qualify for exemption during the 1994 assessment year, was established by the admission in evidence of Department's Exhibits 1 through 6B.

2. On July 15, 1994, the Madison County Board of Review transmitted an Application for Property Tax Exemption To Board of Review, concerning Madison County parcel No. 14-1-15-35-02-201-009 for the 1994 assessment year to the Department (Dept. Ex. No. 2).

3. On November 23, 1994, the Department denied the exemption of this parcel for the 1994 assessment year (Dept. Ex. No. 3).

4. By a letter dated November 28, 1994, the applicant's attorney requested a formal hearing in this matter (Dept. Ex. No. 4).

5. The hearing held in this matter on May 4, 1995, was held pursuant to that request.

6. I take Administrative Notice of the fact that the Department, after a hearing, determined in Docket No. 90-60-20, that this parcel did not qualify for exemption for the 1990 assessment year.

7. The applicant then filed for administrative review of that decision pursuant to the Administrative Review Law.

8. On June 15, 1994, the Circuit Court of Madison County in Oaklawn Cemetery Association v. Illinois Department of Revenue, Docket No. 91-MR-178, determined that the decision of the Department was contrary to the manifest weight of the evidence, and reversed that decision (Dept. Ex. No. 4A).

9. The Department then appealed to the Appellate Court for the Fifth Appellate District. At the hearing, the applicant's attorney stated that

he had advised that Court that he had no objection to the Attorney General's motion for an extension of time in which to file a reply brief on behalf of the Department in the appeal of the decision in Madison County Docket No. 91-MR-178 (Tr. pp. 7 & 8).

10. After receiving the applicant's attorney's request for hearing, the Administrative Law Judge wrote a letter to the applicant's attorney inquiring if he wished to have this matter held in abeyance, pending the decision of the Appellate Court, concerning this parcel for the 1990 assessment year (Dept. Ex. No. 4B).

11. The applicant's attorney replied that he wished to proceed to a hearing in this matter (Dept. Ex. No. 4C).

12. The hearing in this matter was then held on May 4, 1995.

13. The applicant is a cemetery association, which acquired the parcel here in issue pursuant to a deed in trust to certain named individuals, as trustees for the Oaklawn Cemetery Association, dated August 6, 1887 (Dept. Ex. No. 2B).

14. No evidence was offered as to which, if any, of the various cemetery acts the applicant was organized under.

15. The evidence does include a copy of the applicant's license to hold cemetery care funds (Dept. Ex. No. 2C).

16. The applicant owns two parcels of land. The first of those parcels is the parcel here in issue, which contains five acres. The second parcel is located to the west of this parcel, and contains 3.04 acres.

17. A road runs between, and separates, these two parcels.

18. All of the graves, which are in the applicant's cemetery, are located on the 3.04-acre parcel located across the road from this parcel.

19. The five-acre parcel here in issue is hilly and wooded, and during 1994, contained only one improvement.

20. That improvement was a pavilion, consisting of a concrete slab with

corner posts supporting a roof.

21. The pavilion is used once a year on the Sunday before Memorial Day, when the applicant's annual meeting is held there.

22. During 1994, a half to three-quarters of an acre of this parcel was leased to a neighbor, pursuant to an oral pasture lease for rent of \$35.00 per year. The neighbor pastured one horse there during 1994 (Tr. pp. 14 & 15).

23. The treasurer of the applicant testified that the neighbor had not paid the pasture rent for the last two years (Tr. pp. 20 & 21).

24. The 3.04-acre cemetery parcel with the graves on it, which is across the road from the parcel here in issue, is fenced. It is therefore necessary for persons who attend funerals on that parcel, to park along the edge of the parcel here in issue along the road (Tr. pp. 12 & 13).

25. During 1994, there were four burials in the cemetery (Tr. p. 11).

26. During the 1994 assessment year, the parcel here in issue had not been platted for graves, and there had not been any burials on that parcel (Tr. p. 17).

27. Based on the foregoing, I find that the applicant acquired the parcel here in issue on August 6, 1887.

28. I further find that said parcel was not used as a graveyard, or grounds for burying the dead, during the 1994 assessment year.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 200/15-45 provides as follows:

"All land used exclusively as graveyards or grounds for burying the dead is exempt."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956); *Milward v. Paschen*, 16 Ill.2d 302 (1959); and *Cook County Collector v. National College of Education*, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944) and *People ex rel. Lloyd v. University of Illinois*, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967); *Girl Scouts of DuPage County Council, Inc. v. Department of Revenue*, 189 Ill.App.3d 858 (2nd Dist. 1989); and *Board of Certified Safety Professionals v. Johnson*, 112 Ill.2d 542 (1986).

It should be pointed out that because an action for taxes for one year is not identical to a cause of action for taxes in subsequent years, a decision adjudicating tax status for a particular year is not *res judicata* as to the status of the property in later years. *Jackson Park Yacht Club v. Department of Local Government Affairs*, 93 Ill.App.3d 542 (1st Dist 1981). Thus, even where the ownership and use of the property remain the same, a party may be required to relitigate the issue of its exemption. *People ex rel. Tomlin v. Illinois State Bar Association*, 89 Ill.App.3d 1005 (4th Dist. 1980). Consequently, the decision of the Circuit Court of Madison County for the 1990 assessment year in Docket No. 91-MR-178, is not controlling in this matter.

In his brief (Applicant's Ex. No. 1), the attorney for the applicant cites various statutes, which are not applicable to this case. The first

of those statutes is 765 ILCS 805/1, which is the Conveyance of Burial Places to County Act, which only pertains to property conveyed to a county. This parcel was conveyed to certain individuals in trust for the applicant, and not to Madison County.

The next Act cited in the applicant's attorney's brief is 765 ILCS 820/1 et seq., which is the Cemetery Land Ownership and Transfer Act, effective May 27, 1891, which simply provides for the ownership and conveyance of cemetery lands.

The next Act cited is 765 ILCS 835/0.001 et seq., which is the Cemetery Protection Act. This Act, in Section 835/5, provides for the donation of property both real and personal, to cemetery associations, the income from all such property to be used for the maintenance and improvement of the cemetery. This Act goes on to provide in Section 835/7, that the trust funds, gifts, and bequests mentioned in Section 835/5 shall be exempt from taxation. However, the deed to this parcel does not provide that it shall be used to generate income for the maintenance and income of the cemetery. In addition, while three-quarters of an acre of this parcel was rented as a pasture to a neighbor during 1994, the treasurer of the applicant testified that the \$35.00 pasture rent was not received for that year. In fact, no evidence was presented that the applicant received any income from this parcel during the 1994 assessment year. Consequently, the provisions of the Cemetery Protection Act, cited in the applicant's attorney's brief, did not apply to this parcel.

The evidence is undisputed that this parcel was not platted for graves during the 1994 assessment year, and that no burials have taken place on this parcel since it was acquired in 1887.

In the case of *Rosehill Cemetery v. Kern*, 147 Ill. 483 (1893), the Supreme Court held that land owned by a cemetery, and platted for future use for burial purposes, but presently only used for raising sod and

flowers for use in the cemetery, did not qualify for exemption. During the 1994 assessment year, the only uses made of this parcel, other than for parking, were the once-a-year annual meeting of the applicant at the pavilion, and the pasture use of three-quarters of an acre.

These uses do not qualify this parcel for exemption as a graveyard, or grounds for burying the dead.

Concerning the use of the edge of this parcel along the road for parking by persons attending funerals, or visiting the cemetery, located on the 3.04-acre parcel, owned by the applicant across the road, 35 ILCS 200/15-125 provides as follows:

"Parking areas not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt."

It has previously been determined that the parcel here in issue is owned by the applicant, which is a cemetery association. Cemetery associations are not listed as qualifying owners in 35 ILCS 200/15-125. In view of the cases hereinbefore cited, stating that statutes providing for exemption from taxation must be strictly construed, it is clear that areas used for parking by persons going to cemeteries, do not qualify for exemption.

I therefore conclude that the applicant, a cemetery association, owned the parcel here in issue during the 1994 assessment year. I further conclude that the applicant did not use the parcel here in issue as a graveyard, or grounds for burying the dead, during the 1994 assessment year.

I therefore recommend that Madison County parcel No. 14-1-15-35-02-201-009 remain on the tax rolls for the 1994 assessment year, and be taxed to the applicant, Oaklawn Cemetery Association, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

October , 1995